

Research Article

Examining Indonesia's Preparations for Ratifying the BBNJ Agreement

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ABSTRACT: The Biodiversity Beyond National Jurisdiction (BBNJ) Agreement is a crucial international legal instrument for conserving marine biological diversity in areas beyond national jurisdiction. Although Indonesia has signed the agreement, ratification has yet to be completed. This article aims to assess Indonesia's readiness to ratify the BBNJ Agreement. Through a normative-empirical approach, this article will analyze the relevance of the BBNJ Agreement to Indonesia, the ratification process for international agreements in Indonesia, and the progress of Indonesia's preparations to ratify the BBNJ Agreement. This article is expected to provide recommendations to policymakers to accelerate the ratification process and support Indonesia's contribution to the sustainable management of conserving marine biological diversity in areas beyond national jurisdiction.

KEYWORDS: Ratification; International Agreement; BBNJ Agreement.

I. INTRODUCTION

The management of marine biodiversity in areas outside of national jurisdiction is a crucial issue today—along with other marine management and utilization challenges, such as climate change, pollution, and exploitation of marine resources.¹ In this regard, *the United Nations Convention on the Law of the Sea 1982* (UNCLOS 1982) is the main international legal instrument that regulates the use and management of the sea. UNCLOS 1982 contains a comprehensive framework for the division of marine zones,² as well as establishing the rights and obligations of countries in the world in managing and utilizing the seas.³ However, UNCLOS 1982 does not specifically regulate the management and

¹ M. Ridwan and Agussalim Burhanuddin, 'Biodiversity Beyond National Jurisdiction (BBNJ) dalam Perspektif Kepentingan Nasional Indonesia' (2023) 3 *Aufklarung: Jurnal Pendidikan, Sosial dan Humaniora*. [46].

² Dikdik Mohamad Sodik, *Hukum Laut Internasional* (Refika Aditama 2014). [19].

³ Yulia Wiliawati, et al, 'Eksistensi UNCLOS 1982 dalam Upaya Penegakan Hukum Laut Internasional di Perairan Negara Pantai' (2022) 2 *SULTAN JURISPRUDANCE: Jurnal Riset Ilmu Hukum*. [288].

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utilization of marine biodiversity in areas outside national jurisdiction.⁴

In addition to UNCLOS, there are actually other instruments that contain rules related to marine governance in areas outside national jurisdiction or *Areas Beyond National Jurisdiction* (ABNJ), such as the *International Maritime Organization* (IMO) conventions that regulate shipping issues, and there are also *Regional Fisheries Management Organizations* (RFMO) that addresses fisheries issues. However, these instruments are not fully adequate for marine governance in ABNJ, so better protection efforts are needed, especially related to marine biodiversity.⁵ On that basis, in 2023, *the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction*, or commonly known as *the Biodiversity Beyond National Jurisdiction* (BBNJ) *Agreement*, was formed as an effort by the international community to regulate the management and utilization of global marine biodiversity. Currently, the BBNJ *Agreement* has been signed by 112 (one hundred and twelve) countries, including Indonesia.⁶

The main objective of the BBNJ *Agreement* is to ensure the sustainable management and utilization of marine biodiversity in ABNJ from now to the long term, through the effective implementation of relevant treaty provisions, cooperation, and international coordination.⁷ There are 4 (four) main discussion points in the BBNJ *Agreement* that support efforts to manage and utilize marine biodiversity in ABNJ in a sustainable manner, namely: (1) *marine genetic resources, including the fair and equitable sharing of benefits*; (2) *area-based management tools, including marine protected areas*; (3) *environmental impact assessments*; and (4) *capacity-building and the transfer of marine technology*.

However, the BBNJ *Agreement* is still not binding or legally binding (*entry into force*). Referring to Article 68 of the BBNJ *Agreement*, the BBNJ *Agreement* will only

⁴ Simi KK, 'Marine Biodiversity Management under the UNCLOS: Scope and Challenges in the era of blue Economy Policy' (2023) 5 *GLS Law Journal*. [105].

⁵ L. Amrih Jinangkung, 'UNCLOS dan perjanjian BBNJ: Menuju Tata Kelola Laut Lepas yang Lebih Komprehensif' *National Consultation for the Ratification and Implementation of Biodiversity Beyond National Jurisdiction*, (2024).

⁶ See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en.

⁷ Article 2 of the BBNJ *Agreement*.

enter into force 120 (one hundred and twenty) days after the 60th (sixty) country or regional economic organization submits the instrument of *ratification*, approval, *acceptance*, or accession). To date, there are only 20 (twenty) countries that have submitted instruments of ratification of the BBNJ *Agreement*, namely Antigua and Barbuda, Bangladesh, Barbados, Belize, Chile, Cuba, France, Malawi, Maldives, Marshall Islands, Mauritius, Micronesia, Monaco, Palau, Panama, Seychelles, Singapore, Spain, St. Lucia, and Timor-Leste. In addition, no country or regional economic organization has been recorded as having submitted instruments of approval, acceptance, or accession.⁸

Indonesia itself is a member of the group of 120 (one hundred and twenty) countries or regional economic organizations that have signed the BBNJ *Agreement*. Unfortunately, Indonesia has not ratified the BBNJ *Agreement*.⁹ The ratification of an international treaty itself is not a short process. There are various factors to consider as well as several steps that need to be taken before Indonesia can bind itself to an international agreement. For example, UNCLOS 1982, which is the parent agreement of the BBNJ *Agreement*, takes almost 4 (four) years from its signature to its ratification by Indonesia.¹⁰

Several previous studies have examined the relevance of the BBNJ *Agreement* to Indonesia, especially in the context of national interests and international law implications.¹¹ Previous studies focused more on aspects of national interest and legal policy without elaborating in depth on the stages of ratification that must be carried out by Indonesia. In general, previous research has shown that the BBNJ *Agreement* has high relevance for Indonesia, both in terms of economy, ecology, and law. However, research

⁸ See the "Ratification, Accession (a), Acceptance (A), Approval (AA)" column https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XXI-10&chapter=21&clang=_en.

⁹ See the "Signature" and "Ratification, Accession (a), Acceptance (A), Approval (AA)" columns in the "Indonesia" row https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XXI-10&chapter=21&clang=_en.

¹⁰ See the "Signature" and "Ratification, Accession (a), Acceptance (A), Approval (AA)" columns in the "Indonesia" row https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtmsg_no=XXI-6&chapter=21&Temp=mtmsg3&clang=_en

¹¹ Joel P. N. Talaperu et al, 'Kepentingan Nasional Indonesia dalam Meratifikasi Perjanjian Biodiversity Beyond National Jurisdiction (BBNJ)' (2024) 8 *Saintara: Jurnal Ilmiah Ilmu-Ilmu Maritim* [1-11]; M. Ridwan and Agussalim Burhanuddin, 'Biodiversity Beyond National Jurisdiction (BBNJ) dalam Perspektif Kepentingan Nasional Indonesia' (2023) 3 *Aufklarung: Jurnal Pendidikan, Sosial, dan Humaniora*. [43-53].

on ratification preparations is still limited and needs to be further developed. Aspects such as the legislative procedure in ratifying the BBNJ *Agreement* to the comparison between ratification in the form of laws and presidential regulations have not received adequate attention. Therefore, further research is needed to fill this gap and provide guidance for the Government of Indonesia in accelerating the ratification process of the BBNJ *Agreement*.

Based on this background, this article aims to examine the extent of Indonesia's readiness to ratify the BBNJ *Agreement*. The discussion of this article will include three main points, namely (1) the urgency of Indonesia ratifying the BBNJ *Agreement*; (2) a roadmap for the ratification of an international agreement based on Indonesia's positive law; and (3) Indonesia's preparatory process in ratifying the BBNJ *Agreement*.

II. RESEARCH METHODS

This article is a normative-empirical legal research that combines the analysis of positive rules that are generally applicable in certain areas (*law in the books*), such as the national legal framework, along with the implementation of these legal frameworks in society in daily life (*law in action*). The approaches used in this article are in the form of a statute *approach* and a *case approach*. In answering the formulation of the problem in this study, primary legal materials are used, in the form of international agreements and laws and regulations, as well as secondary legal materials, in the form of legal articles related to the BBNJ *Agreement* and the process of ratifying international agreements, obtained through *library research*.

III. INDONESIA'S URGENCY TO RATIFY THE BBNJ *AGREEMENT*

1. Indonesia's Status as an Archipelagic and Developing Country

The BBNJ *Agreement* pays great attention to the fate of archipelagic countries and developing countries in the sustainable management and utilization of marine biodiversity in ABNJ. One of the actualizations of sustainable use regulated in the BBNJ *Agreement* is the *in situ collection* of marine genetic resources or *Marine Genetic Resources* (MGR). In this activity, the parties to the BBNJ *Agreement* are allowed to collect or take samples of MGR at ABNJ. In conducting *in situ* collection of MGR, the

organizer must pay attention to several factors regulated in Articles 11 and 12 of the BBNJ *Agreement*. Article 11 paragraph (3) of the BBNJ *Agreement* stipulates that the collection of MGR in ABNJ must be carried out by paying attention to the rights and interests of coastal countries and other countries. Furthermore, Article 11 paragraph (6) of the BBNJ *Agreement* emphasizes that activities related to MGR are carried out for the benefit of all countries and all mankind, taking into account the interests and needs of developing countries. The interests in question are related to efforts to advance the scientific knowledge of mankind and promote sustainable management and utilization. Through these two articles, it can be seen that the collection of MGR must be based on the principle of *due regard*, where an activity is carried out by considering the rights and interests of other countries in a fair manner.¹²

In order to realize this, the BBNJ *Agreement* encourages the parties to build cooperation, one of which is through the *clearing-house mechanism* (CHM).¹³ CHM is a centralized platform that allows parties to the BBNJ *Agreement* to access, provide, and disseminate information related to the management and utilization of marine biodiversity in ABNJ in a sustainable manner,¹⁴ such as *in situ* collection of MGR.¹⁵ This arrangement is very beneficial for archipelagic and developing countries such as Indonesia because Indonesia is given the opportunity to participate in being involved in monitoring and reporting scientific developments as well as activities for the management and utilization of marine biodiversity in ABNJ in a sustainable manner. One example of CHM is *The ASEAN Clearing House Mechanism*, which provides information related to marine biodiversity in the ASEAN region. In addition, Article 12 paragraph (2) (h) of the BBNJ *Agreement* also opens opportunities for researchers from developing countries such as Indonesia to be involved in the collection of *in situ* MGR at ABNJ. The involvement must be notified to the clearing house within 6 (six) months or as early as possible before the MGR collection activity is carried out.¹⁶

¹² Article 11 (3) of the BBNJ *Agreement*.

¹³ *Ibid.*

¹⁴ Article 51 (3) (a) of the BBNJ *Agreement*.

¹⁵ Article 51 (3) (a) (i) of the BBNJ *Agreement*.

¹⁶ Article 12 (2) of the BBNJ *Agreement*.

In addition, the *BBNJ Agreement* also establishes a funding mechanism that can be used by developing countries, such as Indonesia, in implementing the provisions stipulated in the *BBNJ Agreement*. The funding mechanism consists of: (1) voluntary *trust fund*; special fund; and *the Global Environment Facility Trust Fund*.¹⁷ The voluntary representative fund was established to facilitate the participation of representatives of developing countries that are parties to the agreement, *least developed countries*, *landlocked developing countries*, and *small island developing states* in meetings organized by bodies formed under the *BBNJ Agreement*.¹⁸ Voluntary representative funds are very useful to ensure that funding constraints do not become a barrier for developing countries to participate meaningfully. Meanwhile, special funds and trust funds are global environmental facilities that are used to facilitate developing countries to implement the matters regulated in the *BBNJ Agreement*, such as capacity building and technology transfer, management, and utilization of marine biodiversity in the ABNJ in a sustainable manner.¹⁹

2. Indonesia's Global Commitment

In 2022, *The Conference of the Parties to the Convention on Biological Diversity*, held in Canada, adopted the *Kunming-Montreal Global Diversity Framework* (Kunming-Montreal GBF). The Kunming-Montreal GBF is an action-oriented global target consisting of 23 (twenty-three) targets with the aim of addressing the biodiversity crisis and environmental damage by 2030. One of the twenty-three targets, the 3rd target, is known as the “30 by 30”. 30 by 30 is an initiative by the governments of party countries, including Indonesia, to ensure that at least 30% (thirty percent) of land and inland waters, marine and coastal areas, and areas essential for biodiversity are conserved and effectively managed until 2030.

To support the achievement of this target, the *BBNJ Agreement* provides opportunities for the parties to the agreement, including Indonesia, to protect the ecosystem and marine biodiversity in ABNJ through the establishment of *Area-Based Management Tools*

¹⁷ Article 52 (4) (a), (b), and (c) of the *BBNJ Agreement*.

¹⁸ Article 52 (4) (a) of the *BBNJ Agreement*.

¹⁹ Article 52 (6) (a)-(e) of the *BBNJ Agreement*.

(ABMT). ABMT is defined as a tool for a geographically defined area, which through one or more sectors, or its activities, is managed with the aim of achieving conservation and sustainable use goals.²⁰ Therefore, Indonesia can play a role in supporting the achievement of the 30 by 30 target through the submission and management of ABMT at ABNJ, both individually and collectively.

Based on these discussions, it can be concluded that the *BBNJ Agreement* is a beneficial international agreement for Indonesia because it provides opportunities for developing countries such as Indonesia to participate in the sustainable management and utilization of marine biodiversity in ABNJ, provides funding schemes to support such participation, and is in line with Indonesia's global commitments.

IV. ROADMAP FOR THE RATIFICATION OF AN INTERNATIONAL AGREEMENT BASED ON INDONESIA'S POSITIVE LAW

The ratification of an international agreement by Indonesia is regulated in Law Number 24 of 2000 concerning International Agreements (Law 24/2000). Ratification is a form of ratification of an international agreement regulated in Law 24/2000 – in addition to accession, acceptance, and approval.²¹ The fundamental difference between ratification and other forms of ratification of international agreements is that the country that will ratify an international treaty also signs the text of the agreement. Indonesia itself has signed the *BBNJ Agreement* on September 20, 2023.²²

Realizing the urgency of Indonesia's ratification of the *BBNJ Agreement*, in this case there are several aspects that need to be prepared by Indonesia before officially ratifying the *BBNJ Agreement*. Based on this, the Head of the National Legal Planning Center has mapped these aspects in a roadmap for the ratification of the *BBNJ Agreement*, which consists of: (1) review and acceptance of the *BBNJ Agreement*; (2) the preparation of the National Legislation Program (Prolegnas); (3) preparation of academic manuscripts; (4)

²⁰ Article 1 (1) of the *BBNJ Agreement*.

²¹ Article 1 paragraph (2) of Law Number 24 of 2000 concerning International Agreements.

²² See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en.

meeting of the Inter-Ministerial Committee (PAK) on the preparation of the Draft Law (RUU); (5) coordination of academic manuscripts; (6) harmonization of bills; and (7) legal enforcement.²³

First, the review and acceptance of the BBNJ *Agreement*. The review is a crucial aspect that needs to be carried out by Indonesia to be considered whether the BBNJ *Agreement* needs to be ratified or not. Meanwhile, as explained in the previous sub-chapter, the elements that need to be reviewed from the BBNJ *Agreement* itself include its relevance to Indonesia in order to prioritize national interests. Given the urgency of the issues that are currently occurring in ABNJ and the relevance of the BBNJ *Agreement* to Indonesia that has been analyzed in the previous sub-chapter, it can be concluded that the BBNJ *Agreement* is an important legal instrument and needs to be ratified immediately by Indonesia.

Second, the preparation of the National Legislation Program (Prolegnas). Prolegnas is a planning instrument used to formulate, organize, and manage the entire series of activities in the preparation of new laws in a planned, integrated, and systematic manner.²⁴ The purpose of the preparation of the Prolegnas is to create coordinated and directed laws and regulations based on national interests. Based on the Regulation of the House of Representatives of the Republic of Indonesia Number 2 of 2020 concerning the Establishment of Laws and Regulations (Regulation of the House of Representatives of the Republic of Indonesia 2/2020), the Prolegnas consist of medium-term Prolegnas for a period of 5 (five) years and annual priority Prolegnas,²⁵ and there is also an open cumulative list for certain bills to fill legal needs such as the ratification of an international agreement.²⁶

²³ Arfan Faiz Muhli, 'Peta Jalan Ratifikasi Perjanjian BBNJ dan Pembentukan Pelaksanaan di Tingkat Nasional' *National Consultation for the Ratification and Implementation of Biodiversity Beyond National Jurisdiction*, (2024).

²⁴ See Article 1 number 9 of Law 12 of 2011 *jo.* Law Number 13 of 2022 concerning the Formation of Laws and Regulations: "Program Legislasi Nasional yang selanjutnya disebut sebagai Prolegnas adalah instrument perencanaan program pembentukan Undang-Undang yang disuse secara terencana, terpadu, dan sistematis".

²⁵ See Article 7, Article 8, and Article 9 of the Regulation of the House of Representatives of the Republic of Indonesia Number 2 of 2020 concerning the Establishment of Laws and Regulations.

²⁶ See Article 27 of the Regulation of the House of Representatives of the Republic of Indonesia Number 2 of 2020 concerning the Establishment of Laws and Regulations.

The preparation of the Prolegnas must be based on various components as its substantive requirements, which include: (1) legal sources, namely the 1945 Constitution of the Republic of Indonesia, the TAP MPR, and other related laws; (2) National Development Planning System (SSPN), namely RPJPN (National Long-Term Development Plan), RPJMN (National Medium-Term Development Plan), and RKP (Government Work Plan); as well as the aspirations and legal needs of the community.²⁷ As a democratic country, the component of people's aspirations is a crucial component because the elements of national interest that are used as consideration in ratifying an international agreement must represent the interests of the people (people) as the holder of the highest sovereignty in Indonesia. This can certainly be done by applying the principle of *meaningful participation* in the ratification and implementation process of the BBNJ Agreement.²⁸ The principle of *meaningful participation* can begin with the socialization of the BBNJ Agreement to the public so that the community can play an active role by expressing their aspirations related to the ratification of the BBNJ Agreement.

In addition to substantive requirements that must be based on the existence of academic manuscripts and bills, there are also technical requirements, which must be based on the results of research, study, and mature conception of the bill.²⁹ The steps for the preparation of the Prolegnas itself consist of: (1) submission of proposals from the government, DPR, or DPD; (2) harmonization of documents (academic manuscripts) through harmonization at the Ministry of Law and Human Rights; (3) discussions and meetings between ministries for the finalization of the bill; and (4) the preparation of bills that are carried out in a coordinated manner with the set deadline.³⁰ The preparation of the Prolegnas involves coordination between several institutions, including: (1) the Minister of Law and Human Rights who acts as a coordinator in the government; (2) the Legislative Body of the House of Representatives which acts to lead the coordination between the House of Representatives, the government, and the DPD; and (3) the Law

²⁷ Arfan Faiz Muhlizi, loc.cit.

²⁸ Fathul Hamdani, *et al*, 'Memajukan Keterlibatan Demokratis dalam Proses Ratifikasi Perjanjian di Indonesia' (2023) *11 Rechtsidee*. [9].

²⁹ Arfan Faiz Muhlizi, loc.cit.

³⁰ *Ibid*.

Drafting Committee responsible for the technical preparation of the Bill within the DPD. However, based on Article 111 paragraph (3) of the Regulation of the House of Representatives of the Republic of Indonesia Number 1 of 2014 *jo.* DPR Regulation Number 1 of 2022 concerning Rules of Conduct (DPR RI Regulation 1/2014), the ratification of an international agreement is possible to be carried out without going through the preparation of the Prolegnas.³¹ In this situation, there are certain procedures that must be passed, one of which begins with the submission of an initiative permit to the President by the initiator.³²

Third, the preparation of academic manuscripts. Based on Article 1 number 11 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Law 12/2011), an academic manuscript is “a manuscript of research or legal review and other research results on a certain problem that can be scientifically accounted for regarding the regulation of the problem in a Draft Law, Provincial Regional Regulation, or Regency/City Regional Draft Regulation as a solution to the problem problems and legal needs of the community”.³³ The structure of the academic manuscript consists of: (1) an introduction that also includes the background; (2) theoretical and empirical practice studies; (3) evaluation and analysis of related laws and regulations; (4) philosophical, sociological, and juridical foundations; (5) the range, direction of arrangement, and scope of the regulated material; and (6) a cover containing conclusions and suggestions.³⁴ Philosophical, sociological, and juridical foundations are important structures that must be contained in academic texts. The philosophical foundation emphasizes that laws and regulations must be in line with the values of Pancasila and the 1945 Constitution of the Republic of Indonesia, the sociological foundation ensures that laws and regulations are adjusted to the conditions of society so that they can be accepted and applied effectively,

³¹ Article 111 paragraph (3) of the Regulation of the House of Representatives of the Republic of Indonesia Number 1 of 2014 *jo.* DPR Regulation Number 1 of 2022 concerning Discipline.

³² Fitriani Ahlan Sjarif, ‘Can the Law Be Formed Without Entering the National Legislative Process?’ (Online Law, 2022) < www.hukumonline.com/klinik/a/bisakah-uu-dibentuk-tanpa-masuk-proleg-nas-lt62cbff3e74e0c/ > accessed 6 May 2025.

³³ Article 1 number 11 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

³⁴ Arfan Faiz Muhlizi, *loc.cit.*

while the juridical foundation emphasizes that laws and regulations must be legally valid and guarantee legal certainty.³⁵

Fourth, the meeting of the Inter-Ministerial Committee (PAK) on the drafting of the bill. Based on Article 1 number 4 of the Regulation of the Minister of Law and Human Rights Number 20 of 2015 concerning Procedures and Procedures for Harmonization, Rounding, and Consolidation of the Conception of Draft Laws and Regulations (Permenkumham 20/2015), PAK is a “committee determined by the Initiator tasked with drafting the Draft Law on Government Regulations and Draft Presidential Regulations”.³⁶ In this case, the PAK Meeting is an integral part of the drafting process in Indonesia which aims to ensure that every bill produced is the result of mature collaboration and meets the legal needs of the community.

Fifth, coordination of academic manuscripts. Based on Article 9 of Presidential Regulation Number 87 of 2014 concerning the Implementation Regulation of Law Number 12 of 2011 (Presidential Regulation 87/2014), the Minister is responsible for aligning academic manuscripts received from initiators, which includes systematics and academic manuscript content, and is carried out through alignment meetings involving stakeholders.³⁷ The preparation of academic manuscripts must be carried out in accordance with the preparation techniques regulated in Annex I of Law 12/2011.³⁸ The objectives of the alignment of academic manuscripts include: (1) producing quality academic manuscripts with strong philosophical, sociological, and juridical foundations; (2) provide a good reference for the drafting and discussion of the bill; and (3) to facilitate the understanding of the urgency of law formation for lawmakers and the public.³⁹ The flow of academic manuscript alignment itself consists of several stages that are quite bureaucratic with the final result in the form of an academic manuscript of the bill that

³⁵ Arfan Faiz Muhlizi, *loc.cit.*

³⁶ Article 1 number 4 of the Regulation of the Minister of Law and Human Rights Number 20 of 2015 concerning Procedures and Procedures for Harmonization, Rounding, and Strengthening of the Conception of Draft Laws and Regulations.

³⁷ Article 9 of Presidential Regulation Number 87 of 2014 concerning Implementation Regulations of Law Number 12 of 2011.

³⁸ Article 8 (3) of Presidential Regulation Number 87 of 2014 concerning Implementation Regulations of Law Number 12 of 2011.

³⁹ Arfan Faiz Muhlizi, *loc.cit.*

has been harmonized and a Certificate of Alignment Results, which then the results of the alignment are submitted by the Minister to the initiator.⁴⁰

Sixth, harmonization of the bill. After the alignment of academic manuscripts, the initiator formed a Draft Regulation Drafting Team involving stakeholders from government elements and experts in related fields.⁴¹ The Draft Regulation Drafting Team is tasked with harmonizing, rounding, and consolidating the conception of the Bill, which must be aligned with Pancasila, the 1945 Constitution of the Republic of Indonesia, related laws, and drafting techniques regulated in Appendix II of Law 12/2011.⁴² Then, the discussion of the bill was carried out at 2 (two) levels, namely Level I at the commission meeting, the joint commission, the Legislation Body, the Budget Body, or the Special Committee, while Level II at the Plenary Meeting of the House of Representatives of the Republic of Indonesia.⁴³

Seventh, legalization. After going through the harmonization of the bill, the next stage of the preparation for the ratification of the BBNJ *Agreement* is ratification. Based on Article 110 paragraphs (1) and (2) of Presidential Regulation 87/2014, the bill that has been approved by the House of Representatives is submitted by the leadership of the House of Representatives to the President to be passed into law within a maximum period of 7 (seven) days from the date of mutual approval.⁴⁴ Thus, the ratification of the law is the final stage of a long series of ratification processes of the BBNJ *Agreement*. This process marks Indonesia's official commitment to participate in global efforts to preserve marine biodiversity in the ABNJ.

V. INDONESIA'S PREPARATORY PROCESS IN RATIFYING THE BBNJ AGREEMENT

Until now, both the public and Non-Governmental Organizations (NGOs) continue to encourage the government to immediately ratify the BBNJ *Agreement*. The Government

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Article 110 paragraphs (1) and (2) of Presidential Regulation Number 87 of 2014 concerning the Implementation Regulation of Law Number 12 of 2011.

of Indonesia responded to this encouragement with a positive response, namely by holding a national consultation forum called *the National Consultation for the Retification and Implementation of Biodiversity Beyond National Jurisdiction* on June 21, 2024. The forum was attended by various policy stakeholders, namely: (1) various ministries, such as the Ministry of Foreign Affairs (Kemenlu), the Coordinating Ministry for Maritime Affairs and Investment (Kemenkomarves), the Ministry of Maritime Affairs and Fisheries (KKP), and the Ministry of Law and Human Rights (Kemenkumham); (2) Government institutions such as the National Research and Innovation Agency (BRIN); (3) Non-Governmental Organizations (NGOs) such as *the Indonesian Center for the Law of the Sea*, Faculty of Law, Padjadjaran University, Indonesia *Ocean Justice Initiative*, and the Indonesian Conservation Foundation; and (4) Companies such as PT Pertamina (Persero).

However, if referring to the ratification roadmap in the previous discussion, the ratification process of the BBNJ *Agreement* is still at the stage of review and acceptance of the BBNJ *Agreement*. Referring to the discussion at the national consultation forum, the government has still not determined the legal product that will be used to ratify the BBNJ *Agreement*. There are 2 (two) differences of views regarding the choice of legal products, namely between the Ministry of Law and Human Rights and the Ministry of Communication.

The Ministry of Law and Human Rights is of the view that the ratification of the BBNJ *Agreement* needs to be carried out by law in accordance with the provisions of Article 10 of Law 24/2000. Based on an article *a quo*, an international agreement is ratified by law when it relates to: (1) political, peace, defense, and national security issues; (2) changes in the territory or determination of the territorial boundaries of the Republic of Indonesia; (3) the sovereignty or sovereign rights of the state; (4) human rights and the environment; (5) the establishment of new legal rules; and (6) foreign loans and/or grants. The Ministry of Law and Human Rights is of the view that the material of the BBNJ *Agreement* is in accordance with the material on the sovereignty or sovereign rights of the state so that it needs to be ratified through law.⁴⁵

⁴⁵ Arfan Faiz Muhlizi, *loc.cit.*

Furthermore, the Ministry of Communication and Communication is of the view that the ratification of the BBNJ *Agreement* only needs to be carried out by presidential regulation, in accordance with the provisions of Article 11 paragraph (1) of Law 24/2000, on the basis of the argument that the BBNJ *Agreement* does not form new legal rules related to the management of marine resources in ABNJ because it has been regulated in UNCLOS 1982 and/or national regulations.⁴⁶ For example, the BBNJ *Agreement* adopts the principles previously set out in UNCLOS 1982, such as *freedom of the high seas* and *common heritage of mankind*. The definition and scope of MGR in the BBNJ *Agreement* are also in line with the scope and management of the utilization and conservation of *marine living resources* in UNCLOS 1982.⁴⁷

Then, several general principles stipulated in Article 7 of the BBNJ *Agreement*, such as the *precautionary approach* principle and the *polluter pays principle*, have been adopted in various national regulations related to environmental protection. These two principles can be found in Law Number 32 of 2009 concerning Environmental Protection and Management (Law 32/2009), namely the principle of prudence and polluter pays.⁴⁸ In addition, regulations related to marine scientific research, *Environmental Impact Assessment* (EIA), the establishment of conservation areas, and capacity development and technology transfer have been regulated both in UNCLOS 1982 and various national and international legal instruments that have been ratified by Indonesia.

In order to speed up the ratification process, the Government of Indonesia must immediately decide on the legal product that will be used to ratify the BBNJ *Agreement*. *The selection of the legal product will have an impact on the next stage that must be taken in the ratification process.* If the Government of Indonesia decides to ratify the BBNJ *Agreement* by law, the next step that needs to be taken is to decide whether

⁴⁶ Asisten Deputi Delimitasi Zona Maritim dan Kawasan Perbatasan Kemenko Marves, 'Ketimpangan dan Posisi Indonesia dalam Perjanjian BBNJ' *National Consultation for the Ratification and Implementation of Biodiversity Beyond National Jurisdiction*, (2024).

⁴⁷ Arfan Faiz Muhlizi, *loc. cit.*

⁴⁸ Article 2 letters f and j of Law Number 32 of 2009 concerning Environmental Protection and Management.

or not a Ratification Bill on the BBNJ *Agreement* is needed to be included in the Prolegnas. If the presidential regulation is decided to be a legal product to ratify the BBNJ *Agreement*, the next step that needs to be taken is to decide whether or not a Draft Presidential Regulation on the BBNJ *Agreement* is needed to be included in the Presidential Regulation Drafting Program.

The next step in the process of ratifying the BBNJ *Agreement* is the preparation of academic manuscripts. In compiling academic manuscripts, especially regarding the points of the scope of the regulated material, the Government of Indonesia needs to pay attention to some of the obligations of state parties regulated in the BBNJ *Agreement* and require regulation in national regulations. In addition, the Government of Indonesia also needs to review the alignment of the obligation arrangement with similar arrangements that have been in force in national regulations. Some of the obligations of the state party include:⁴⁹

1. Article 10 paragraph (2) b of the BBNJ *Agreement* regulates the obligation to prepare a reporting mechanism related to fish caught in fisheries in ABNJ. However, the reported catch only focused on utilization related to prospecting or *biotechnology activities*. Indonesia itself already has regulations that regulate the reporting mechanism for fishing in ABNJ, namely the Regulation of the Minister of Maritime Affairs and Fisheries Number 33 of 2021 concerning *Fishing Log Books*, Monitoring on Fishing Vessels and Fishing Transporters, Inspection, Testing, and Marking of Fishing Vessels, and Fisheries Vessel Manning Governance. Fish caught are reported daily through *fishing log books*,⁵⁰ either by skippers or fishermen, as well as electronically and manually.⁵¹
2. Article 4 and Article 8 (3) of the BBNJ *Agreement* which regulate the implementation of marine scientific research on MGR by government vessels in ABNJ. Marine research

⁴⁹ Asisten Deputi Delimitasi Zona Maritim dan Kawasan Perbatasan Kemenko Marves, *loc. cit.*

⁵⁰ Article 1 number 1 of the Regulation of the Minister of Maritime Affairs and Fisheries Number 33 of 2021 concerning Fishing Log Books, Monitoring on Fishing Vessels and Fish Transport Ships, Inspection, Testing, and Marking of Fishing Vessels, and Fisheries Vessel Manning Governance.

⁵¹ Article 3 paragraph (1) of the Regulation of the Minister of Maritime Affairs and Fisheries Number 33 of 2021 concerning Fishing Log Books, Monitoring on Fishing Vessels and Fish Transport Ships, Inspection, Testing, and Marking of Fishing Vessels, and Fisheries Vessel Manning Governance.

activities are regulated in Presidential Regulation Number 80 of 2023 concerning Indonesia's Active Role in the International Seabed Area. Based on Article 4 of the BBNJ *Agreement*, marine scientific research activities are carried out by "agencies that organize government affairs in the fields of research, development, study, and application as well as invention and innovation, nuclear power implementation, and space management based on policies prepared to improve the implementation of marine scientific research" or better known as BRIN.

3. Article 12 of the BBNJ *Agreement* which regulates the obligation to establish and regulate CHM for the implementation of the collection and utilization of MGR in ABNJ. Indonesia itself already has a CMH called the Indonesian Biodiversity Clearing Center (BKKHI).⁵² The establishment of BKKHI is a mandate of the Cartagena Protocol which was ratified by Law Number 21 of 2004. However, in terms of organizational structure, BKKHI is currently under the auspices of the Ministry of Environment and Forestry (KLHK). Therefore, in order for BKKHI to facilitate obligations in the marine sector in accordance with the provisions in the BBNJ *Agreement*, it is necessary to hold discussions between ministries and/or institutions, especially between the Ministry of Environment and Forestry and the Ministry of Forestry.
4. Article 13 of the BBNJ *Agreement* which regulates the provisions for respect for the intellectual property rights of customary law communities or local communities, or *traditional knowledge*. Intellectual property rights themselves are recognized and regulated in several national regulations, such as the Regulation of the Minister of Environment and Forestry Number P.2/MENLHK/SETJEN/KUM.1/1/2018 concerning Access to Genetic Resources of Wild Species and Profit Sharing for Their Utilization and Regulation of the Minister of Law and Human Rights Number 13 of 2017 on Communal Intellectual Property Data.
5. Article 52 (1) of the BBNJ *Agreement* which calmly regulates the funding

⁵² Decree of the Minister of Environment and Forestry Number SKK.775/MENLHK/KSDAE/KUM.0/9/2006 dated September 23, 2016 concerning the Working Group of the Biodiversity Clearing House.

mechanism to assist developing countries that are parties to the agreement to implement the provisions of the agreement. In relation to this article, the government needs to determine the ministries and/or bodies that are authorized to receive, manage, and utilize the funds provided based on the funding mechanism in the *BBNJ Agreement*.

Based on the explanation above, it can be concluded that until now the ratification process of the *BBNJ Agreement* is still at the review and acceptance stage. In the future, the Government of Indonesia still has to complete several obligations such as determining the legal products that will be used for the ratification of the *BBNJ Agreement* and aligning institutions and regulations to carry out the obligations mandated by the *BBNJ Agreement*.

VI. CONCLUSION

Based on the discussion, The *BBNJ Agreement* has significant relevance for archipelagic countries and developing countries such as Indonesia, which are rich in marine biodiversity. Through the *BBNJ Agreement*, Indonesia can play an active role in ensuring the sustainable management of marine biodiversity in ABNJ. Although Indonesia has signed the *BBNJ Agreement* on September 20, 2023, until now there has been no official ratification carried out by Indonesia. This shows the need for strategic steps to prepare for ratification. Indonesia's positive law has mapped the stages of ratification of an international agreement, which includes the review, preparation of the Prolegnas, preparation of academic manuscripts, PAK meetings, alignment of academic manuscripts, harmonization of bills, and the ratification of ratification laws. In this context, it is important for the government to involve community participation, so that national interests can be effectively represented. Until now, the ratification process is still in the stage of reviewing and accepting the *BBNJ Agreement*. Given the urgency of the issues faced in the ABNJ today, Indonesia needs to immediately ratify this agreement to strengthen the country's position in the management of global marine resources and make a positive contribution to efforts to manage marine biodiversity in the ABNJ in a sustainable manner.

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